

Council/Agency Meeting Held: _____		City Clerk's Signature
Deferred/Continued to: _____		
<input type="checkbox"/> Approved	<input type="checkbox"/> Conditionally Approved	<input type="checkbox"/> Denied
Council Meeting Date:	6/18/07	Department ID Number: ED-07-01

**CITY OF HUNTINGTON BEACH
REQUEST FOR COUNCIL/REDEVELOPMENT AGENCY ACTION**

SUBMITTED TO: HONORABLE MAYOR/CHAIRMAN AND CITY COUNCIL/
REDEVELOPMENT AGENCY MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, CITY AMINISTRATOR/EXECUTIVE
DIRECTOR

PREPARED BY: STANLEY SMALEWITZ, DIRECTOR OF ECONOMIC
DEVELOPMENT/DEPUTY EXECUTIVE DIRECTOR

SS

SUBJECT: APPROVE SECOND IMPLEMENTATION AGREEMENT WITH BELLA
TERRA ASSOCIATES, LLC

Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)

Statement of Issue: The Agency is being asked to approve the Second Implementation Agreement to the Owner Participation Agreement (OPA) by and between the Redevelopment Agency of the City of Huntington Beach and Bella Terra Associates, LLC. The Second Implementation Agreement amends the OPA regarding the payment of the Agency's obligation to Bella Terra Associates of \$15,000,000 in Feasibility Gap Payments for the construction, rehabilitation and renovation of the Huntington Center (Bella Terra).

Funding Source: Funds are available in the Redevelopment Debt Services account number 40740101.88030.

Recommended Action:

City Council/Redevelopment Agency Motion to:

1. Open and conduct the Public Hearing.
2. Close the Public Hearing.

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REQUEST FOR COUNCIL/REDEVELOPMENT AGENCY ACTION

MEETING DATE: 6/18/07

DEPARTMENT ID NUMBER: ED-07-01

Redevelopment Agency Motion to

1. Adopt Resolution No. 368 A resolution of the Redevelopment Agency of the City of Huntington Beach, California, approving and making certain findings pursuant to the Health and Safety Code Section 33433 for a Second Implementation Agreement to the Owner Participation Agreement between the Redevelopment Agency of the City of Huntington Beach and Bella Terra Associates, LLC (Attachment No. 2).
2. Approve the Second Implementation Agreement (Attachment No. 1) by and between the Redevelopment Agency and Huntington Center Associates, LLC and Bella Terra Associates, LLC and authorize the Agency Chairman and Agency Clerk to execute the agreement.

City Council Motion to:

1. Adopt Resolution No. 2007-37 A Resolution of the City Council of the City of Huntington Beach, California, approving and making certain findings pursuant to the Health and Safety Code Section 33433 for a Second Implementation Agreement to the Owner Participation Agreement between the Redevelopment Agency of the City of Huntington Beach and Bella Terra Associates, LLC (Attachment No. 3).

Alternative Action(s):

Do not approve the recommended motions and refer back to staff for changes.

Analysis:

In 2000, the Redevelopment Agency of the City of Huntington Beach (Agency) executed an Owner Participation Agreement (OPA) with Huntington Center Associates, LLC. This OPA was subsequently amended to extend the Schedule of Performance. The OPA and the First Implementation Agreement to the OPA (collectively known as the OPA) require Huntington Center Associates to redevelop the Huntington Center property with a mixed-use commercial project.

The property was conveyed to Bella Terra Associates, LLC (Participant); this entity is responsible for completing the scope of development required by the OPA. The terms of the OPA required the Agency to provide financial assistance to fill the \$15 million feasibility gap associated with the scope of development identified in the OPA. The assistance was directly tied to demolition, clearance, site preparation, public improvements, utilities, facilities, acquisition of land and easements, and all other legally permissible items. The assistance was to be treated as a loan from the Participant to the Agency. The Agency and Bella Terra Associates have clarified certain financial terms of the OPA, and are proposing to modify the Agency loan repayment structure through the Second Implementation Agreement to the OPA. The terms being proposed are:

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1. November 1, 2005 is established as the date on which interest began accruing on the loan.
2. The loan bears interest at 6.9357% per annum. This is the same interest rate as would be applied under the OPA.
3. The Agency will make a \$629,447 prepayment to the Participant on the September 30th that follows the completion date.
4. Debt Service Payment
 - a. The first scheduled debt service payment on the loan is due on the September 30th that follows the completion date. This is the same debt service commencement date as was imposed by the OPA.
 - b. No sales tax revenues are pledged to the repayment of the loan. Comparatively, the OPA required the Agency to allocate 60% of the sales tax revenue received by the City from the project, above \$750,000, to debt service.
 - c. The debt service payment on the loan will be drawn exclusively from the net property tax increment generated by the project. However, the definition of the "net property tax increment" has been changed by the Second Implementation Agreement:
 - i. The OPA defines net property tax as the property tax increment received by the Agency after deduction of Housing Set Aside funds, County Administrative costs and ERAF payments.
 - ii. The Second Implementation Agreement definition does not permit the Agency to deduct any amount for ERAF obligations that may be imposed in the future in determining the amount of tax increment that is available to pay the debt service.
 - d. One-hundred percent (100%) of the net property tax increment revenue will be committed annually to the debt service payments until the principal and interest balances are fully repaid, or the end of 20 years, whichever occurs first.
5. Any outstanding principal and interest balance remaining at the end of 20 years must be forgiven by the Participant. The forgiveness date remains unchanged from the terms imposed by the OPA.

Under the terms imposed by both the OPA and the proposed Second Implementation Agreement, the project will generate more property tax increment revenues than will be required to fully amortize the \$15 million loan. When the OPA was executed, the projected

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value of the Project was \$111 million. The assessed value of the project is currently set at \$203 million. During the loan repayment term, the Agency revenues will be limited to the housing set-aside portion of the property tax increment. After the loan term expires, the Agency will receive 100% of the property tax increment net of pass-through payments to other governmental entities.

The Second Implementation Agreement allows the City to receive 100% of the sales tax revenues generated by the project. Under the OPA, the City was to receive the first \$750,000 in sales tax revenues, and then was required to commit 60% of the remaining sales taxes to debt service over the 20-year loan term. The proposed modifications to the loan terms results in the City being projected to receive \$18.49 million, \$7.93 present value, more in sales tax revenues than were projected to be received under the OPA.

Staff recommends the approval of the Second Implementation Agreement as the terms of the Agreement clarifies the date on which interest began accruing on the loan and the date on which payments will begin. The Agreement does not alter the principal balance or interest rate applied to the loan, but will modify the source of repayment. Under this Agreement, the loan will be repaid exclusively from property tax increment and sales tax will no longer be used to repay the loan. A detailed analysis may be found in Attachment No. 4 Summary Report.

Strategic Plan Goal:

F-1 Create long-term financial strategies for funding the backlog of capital projects and maintenance requirements, and ensuring sufficient reserves to withstand major revenue fluctuations in order to ensure continuation of city services during economic downturns.

The terms of the Second Implementation Agreement shift the loan payment source from General Fund sales tax revenues to Redevelopment property tax increment generated by the development; therefore, the new agreement furthers the above-stated goal of ensuring sufficient reserves are available to fund City services and capital projects by eliminating debt service to be taken from the General Fund.

Environmental Status: Not Applicable.

REQUEST FOR COUNCIL/REDEVELOPMENT AGENCY ACTION

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Attachment(s):

City Clerk's Page Number	No.	Description
6	1	Second Implementation Agreement To Owner Participation Agreement
16	2	Adopt Resolution No. <u>368</u> A resolution of the Redevelopment Agency of the City of Huntington Beach, California, approving and making certain findings pursuant to the Health and Safety Code Section 33433 for a Second Implementation Agreement to the Owner Participation Agreement between the Redevelopment Agency of the City of Huntington Beach and Bella Terra Associates, LLC
20	3.	Resolution No. <u>2007-37</u> A Resolution of the City Council of the City of Huntington Beach, California, approving and making certain findings pursuant to the Health and Safety Code Section 33433 for a Second Implementation Agreement to the Owner Participation Agreement between the Redevelopment Agency of the City of Huntington Beach and Bella Terra Associates, LLC
24	4.	Summary Report Pursuant to Section 33433 of the California Health and Safety Code

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ATTACHMENT #1

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SECOND IMPLEMENTATION AGREEMENT TO

OWNER PARTICIPATION AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH

and

BELLA TERRA ASSOCIATES, LLC

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**SECOND IMPLEMENTATION AGREEMENT
TO OWNER PARTICIPATION AGREEMENT**

This SECOND IMPLEMENTATION AGREEMENT ("Agreement") is dated as of _____, 2007 for reference purposes only, and is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body, corporate and politic ("Agency"), and BELLA TERRA ASSOCIATES, LLC a Delaware limited liability company ("Participant"), with reference to the following facts:

RECITALS

- A. The Agency and Participant's predecessor in interest, Huntington Center Associates, LLC, a Delaware limited liability company, entered into that certain Owner Participation Agreement dated October 2, 2000, as implemented by that certain First Implementation Agreement dated as of August 1, 2005, (collectively, the "OPA"). The OPA is hereby incorporated by this reference. Reference herein to the OPA shall include any and all attachments thereto. Any capitalized term not defined herein shall have the meaning ascribed to it in the OPA. The OPA was subsequently assigned to Participant pursuant to that certain Assignment and Assumption Agreement dated as of August 4, 2005.
- B. The OPA pertains to the construction, development, operation and management of the "Site," as defined in the OPA, generally comprised of a retail shopping center formerly known as Huntington Center and currently known as Bella Terra (the "Project").
- C. Subject to and in accordance with the terms and conditions of the OPA and the Schedule of Feasibility Gap Payments attached thereto, the Agency is obligated to reimburse the Participant as set forth in Part 2 of the Schedule of Feasibility Gap Payments ("Feasibility Gap Obligation").
- D. The Agency and Participant desire to enter into this Agreement to clarify and amend the OPA to provide: (i) a commencement date for interest accrual on the Feasibility Gap Obligation; (ii) a required one time only prepayment of the Feasibility Gap Obligation in the amount of \$629,447; (iii) that interest on the Feasibility Gap Obligation shall be fixed at 6.9357% per year; (iv); that, except for the prepayment described in clause (ii) above, all principal and interest Feasibility Gap Obligation payments to Participant shall be made solely from Available Site-Generated Property Tax Increment; and (v) a further limitation on appeals, challenges and/or contests of property tax assessments on the Site.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and Participant hereby agree as follows:

1. Feasibility Gap Obligation.

a. Schedule of Feasibility Gap Payments. Part 2 of the Schedule of Feasibility Gap Payments, Attachment No. 7 to the DDA, is hereby amended as follows:

- (1) Section (c) entitled "Interest Rate" is hereby deleted in its entirety and replaced with the following new Section (c):

"(c) Interest Rate. The principal amount of this Part 2 shall bear interest at the rate of 6.9357% per annum from November 1, 2005 until paid."

- (2) Section (d) entitled "Obligation to Make Payments" is hereby deleted in its entirety and replaced with the following new Section (d):

"(d) Obligation to Make Payments. The obligations of the Agency under this Part 2 shall be a special and limited obligation payable to Participant solely from the source of funds expressly identified in this Part 2. The Agency shall have no obligation to pay any amounts to Participant pursuant to this Part 2 except as follows:

(1) Conditions Precedent. The following conditions precedent to each payment hereunder shall be satisfied:

A. The Completion Date, as defined in paragraph (k) below, shall have occurred;

B. The Operating Commencement Date, as defined in paragraph (k) below, shall have occurred;

C. Participant shall not be in default of any of its material obligations under the OPA; and

D. The amendment(s) described in Section 2.b. of the Second Implementation Agreement to the OPA have been duly executed in recordable form and recorded against the Site in accordance with Section 2.b. of the Second Implementation Agreement to the OPA.

(2) Available Site-Generated Property Tax Increment. On or prior to September 30 of each year, beginning with the first September 30 which follows the satisfaction of all conditions precedent specified in paragraph (d)(1) above, and continuing until the principal amount specified in paragraph (b) above (and any accrued interest thereon) has been paid in full or until the day after the nineteenth (19th) anniversary of

the first Agency payment under this Part 2, whichever first occurs, the Agency shall calculate and pay to Participant all Available Site-Generated Property Tax Increment received by the Agency during the prior Fiscal Year. For illustrative purposes only, assuming the first Agency payment under this Part 2 occurs on September 30, 2007 and all funds owed by Agency to Participant pursuant to this Attachment No. 7 have not yet been paid, the last Agency payment hereunder shall be due September 30, 2026, and any balance remaining in Agency's payment obligations under this Part 2 after such date shall automatically be deemed forgiven.

"Available Site-Generated Property Tax Increment" means the total ad valorem property tax increment revenue allocated to and received by Agency in any fiscal year pursuant to Section 33670(b) of the California Health and Safety Code, as said statute may be amended from time to time, by application of the one percent (1%) tax levied against real property as permitted by Article XIII A of the California Constitution, in an amount equal to any increase in the assessed value of the Site over and above an assessed value of Forty Three Million Two Hundred and Twenty Eight Thousand Dollars (\$43,228,000), but specifically excluding therefrom all of the following: (A) a portion of such tax increment revenues equal to the twenty percent (20%) of tax increment revenue from the redevelopment project area as a whole that is set aside pursuant to Sections 33334.2 *et seq.* of the California Health and Safety Code or any successor law for low- and moderate-income housing purposes; and (B) a portion of such tax increment revenues equal to the percentage of tax increment revenues from the redevelopment project area as a whole that the Agency is required to pay to any and all governmental entities pursuant to any provision of law, as amended from time to time, or pursuant to tax sharing/pass-through agreements entered into prior to the OPA by the Agency and such governmental entities implementing the tax sharing/pass-through agreements; and (C) the amount of any revenues received by the Agency which are attributable to any special taxes or assessments or voter-approved indebtedness; and (D) charges for County administrative charges, fees or costs equal to the percentage of such charges in the Project Area as a whole.

(3) Required One Time Prepayment. Without limiting in any way paragraph (e), below, the Agency shall be required to make a one time only prepayment to Participant towards the amount owed by the Agency under this Part 2 in the amount of Six Hundred Twenty-Nine Thousand Four Hundred Forty-Seven Dollars (\$629,447) on the first September 30 which follows the satisfaction of all conditions precedent specified in paragraph (d)(1) above. Payment shall not be made from or reduce the Available Site-Generated Property Tax Increment. The

payment shall be treated, for accounting purposes, as if it had been made on September 30 of the year preceding the first payment under Section (d)(2) hereof, and shall be applied first to accrued interest and thereafter to principal.

- (3) The second paragraph of Section (g) entitled "Subordination" is hereby deleted in its entirety.

- (4) Section (j) entitled "Payment Obligations Forgiven" is hereby deleted in its entirety and replaced with the following new Section (j):

"(j) Payment Obligations Forgiven. Any balance remaining in Agency's payment obligations under this Part 2 after the Reimbursement Term shall automatically be deemed forgiven."

- (5) Section (k) entitled "Definitions" is hereby deleted in its entirety and replaced with the following new Section (k):

"(k) Definitions. The following definitions shall apply to this Part 2:

(1) "City" as used herein shall mean the City of Huntington Beach.

(2) "Completion Date" as used herein shall mean the date on which the Release of Construction Covenants to be issued by Agency pursuant to the Agreement with respect to the redeveloped Site and improvements is recorded in the Official Records of Orange County.

(3) "Fiscal Year," as used herein, means each twelve-month period beginning on July 1 and ending on June 30.

(4) "Operating Commencement Date" as used herein means November 1, 2005 only for purposes of calculating the commencement of interest accrual on the Agency's payment obligation and for all other purposes under the OPA, including the commencement of the Agency's payment obligations and the Agency Participation Payments, it shall mean the Completion Date.

(5) "Reimbursement Term" as used herein means the period commencing on the first September 30 which follows the satisfaction of all conditions precedent specified in paragraph (d)(1) above, and continuing until the principal amount specified in paragraph (b) above (and any accrued interest thereon) has been paid in full or until the nineteenth (19th) year following the first Agency payment under this Part

2, whichever first occurs, during which Agency is obligated to make reimbursement payments to Participant pursuant to this Attachment No. 7.

(6) "Site" as used herein means that certain real property (excluding the Ward Parcel) in the City of Huntington Beach, more particularly described in the legal description attached hereto as Exhibit A and incorporated herein by this reference, and any improvements constructed or to be constructed thereon in accordance with the OPA.

- b. Reimbursement Term. All references to "Reimbursement Term" in the OPA, including all attachments thereto, shall be deemed to refer to the Reimbursement Term described in Part 2 of the Schedule of Feasibility Gap Payments as revised pursuant to this Agreement.

2. Assessments.

- a. Participant hereby covenants and agrees on behalf of itself and any successors and assigns in the Site or any portion thereof or any improvements thereon or any interest therein that Participant, such successors and assigns shall pay when due all real estate taxes and assessments assessed and levied on the Site and any improvements thereon and, except as may be requested by tenants of the Project whose leases predate August 1, 2005, refrain from appealing, challenging or contesting in any manner the validity or amount of any tax assessment, encumbrance or lien on the Site; provided, however, that such prohibition shall not apply to an appeal, challenge or contesting of an erroneous initial assessment for property tax purposes of the Site in the fiscal year of the completion of the improvements to be constructed and/or renovated pursuant to this Agreement provided, however, that that no such appeal, challenge or contest shall be permitted to attempt to obtain or result in an assessed value of the Site, including land and improvements, which is lower than Two Hundred Three Million Three Hundred Seventeen Thousand Dollars (\$203,317,000).
- b. Participant agrees to execute in recordable form amendment(s) to the Covenant Agreement and any other document (including, without limitation, any other attachment to the OPA) reasonably deemed necessary by the Agency Executive Director to implement the purposes of this Section, which amendment(s) shall be in form and content reasonably approved by the Agency Executive Director. The parties agree that the Agency shall record any such amendment(s) against the Site.

3. Example.

As an example of the payments to be made hereunder, assuming that (i) the Completion Date occurs prior to September 30, 2007 and (ii) the Available Site-Generated Property Tax Increment for the July 1, 2006 - June 30, 2007 fiscal year is \$1,534,651, the payment to be made to Participant on September 30, 2007 would be \$2,164,018 (\$629,447 + \$1,534,571 = \$2,164,018) applied as follows:

\$15,000,000	Principal amount
+ 979,014	Interest from 11/01/05 - 9/30/06
\$15,979,014	Principal and interest as of 9/30/06
- 629,447	Prepayment deemed made as of 9/30/06
\$15,349,567	Balance as of 10/01/06
+ 1,083,059	Accrued interest from 10/1/06 - 9/30/07
\$16,432,626	Balance as of 9/30/07
-1,534,571	Assumed payment as of 9/30/07
\$14,898,055	Balance as of 10/1/07

4. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of the parties hereto.
5. OPA in Full Force and Effect. Except as otherwise modified herein, the terms and conditions of the OPA shall remain unmodified and in full force and effect, including, without limitation, the conditions precedent to Agency's obligation to commence payment of the Feasibility Gap Obligation. In the event of any conflict between the terms of this Agreement and the OPA, the terms of this Agreement shall control.
6. Further Assurances. The parties agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.
7. Date of this Agreement. The "Effective Date" of this Agreement shall be the date this Agreement is executed by the Agency.
8. Counterparts. This Agreement may be executed by each party on a separate signature page, and when the executed signature pages are combined with the balance of this Agreement, it shall constitute one single instrument.

[signatures on following pages]

"AGENCY"

REDEVELOPMENT AGENCY OF THE
CITY OF HUNTINGTON BEACH

Dated: _____, 2007

Chairman

ATTEST:

Agency Clerk

APPROVED AS TO FORM:
Agency General Counsel

INITIATED AND APPROVED:
Director of Economic Development

[Signature]
S. G. O. 11/9/07

APPROVED AS TO FORM:
KANE, BALLMER & BERKMAN
Agency Special Counsel

[Signature]

REVIEWED AND APPROVED:
Executive Director

[Signature]
Murray O. Kane

[Signature]

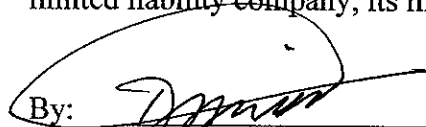
[Signatures continue on following page]

"PARTICIPANT"

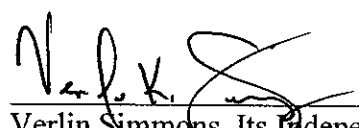
BELLA TERRA ASSOCIATES, LLC

By: Bella Terra Borrower, LLC, a Delaware
limited liability company, its member

Dated: 4/10, 2007

By: 
B. John Miller, President

Dated: 4/10, 2007

By: 
Verlin Simmons, Its Independent
Director

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ATTACHMENT #2

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RESOLUTION NO. 368

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA, APPROVING AND MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33433 FOR A SECOND IMPLEMENTATION AGREEMENT TO OWNER PARTICIPATION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH AND BELLA TERRA ASSOCIATES

WHEREAS, the Redevelopment Agency of the City of Huntington Beach ("Agency") is engaged in activities necessary to execute and implement the redevelopment plan ("Redevelopment Plan") for the Merged Redevelopment Project Areas of Huntington Beach (collectively, the "Merged Project Area"); and

WHEREAS, Agency proposes to enter into a Second Implementation Agreement ("Second Implementation Agreement") with Participant, which supplements, modifies or incorporates by reference the terms of that certain Owner Participation Agreement by and between Agency and Huntington Center Associates, LLC (the "Original Participant") dated as of October 2, 2000 (the "OPA"), as previously supplemented by that certain First Implementation Agreement dated as of August 4, 2005 (the OPA, the First Implementation Agreement and the Second Implementation Agreement shall be collectively referred to herein as the "Agreement"); and

WHEREAS, That certain real property within the boundaries of the Merged Project Area set forth with particularity in the Agreement (the "Property") was recently conveyed by the Original Participant to Bella Terra Associates, LLC (the "Participant") pursuant to an Assignment and Assumption Agreement approved by the Agency ; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 et seq.) the Agency and the City Council held a joint public hearing on the Second Implementation Agreement, having duly published notice of such public hearing and having made copies of the proposed Second Implementation Agreement and other reports and documents (including the summary referred to in Section 33433) available for public inspection and copying; and

WHEREAS, the Agency has duly considered all terms and conditions of the proposed transaction, and believes that it is in the best interests of the Merged Project Area and the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law and requirements;

NOW, THEREFORE, IT IS RESOLVED by the Redevelopment Agency of the City of Huntington Beach, California, as follows:

1. All recitals set forth in this resolution are true and correct.
2. The consideration from Participant under the Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Second Implementation Agreement for, among other reasons, the reasons set forth in the 33433 Summary.
3. The implementation of the Agreement, as amended by the Second Implementation Agreement, will assist in the elimination of blight in the Merged Project Area.
4. The implementation of the Agreement, as amended by the Second Implementation Agreement, is consistent with the implementation plan adopted by the Agency pursuant to Section 33490 of the Health and Safety Code.
5. The proposed Second Implementation Agreement is hereby approved in substantially the form presented at this meeting, with such minor changes as may be approved by the Executive Director of the Agency with the approval as to form by the Agency General Counsel.
6. The Chairman of the Agency and the Executive Director of the Agency are hereby authorized to execute the Second Implementation Agreement on behalf of the Agency. A copy of the Second Implementation Agreement when executed by the Agency shall be placed in the file of the office of the Agency Clerk.
7. The Executive Director of the Agency (or his designee) is hereby authorized, on behalf of the Agency, to sign all documents (including but not limited to grant deeds) necessary and appropriate to carry out and implement the Second Implementation Agreement, and to administer the Agency's obligations, responsibilities and duties to be performed thereunder.

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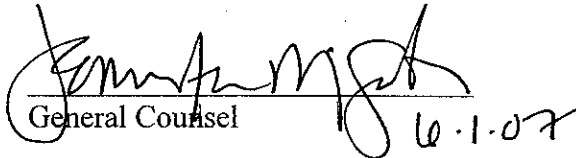
PASSED AND ADOPTED by the Redevelopment Agency of the City of Huntington Beach at a regular meeting held thereof on the _____ day of _____, 200_.

Chairman

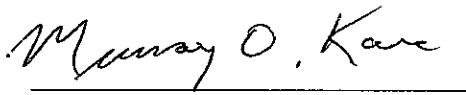
REVIEWED AND APPROVED:


Executive Director

APPROVED AS TO FORM:


General Counsel 6-1-07

KANE, BALLMER & BERKMAN
Agency Special Counsel


Murray O. Kane

INITIATED AND APPROVED:


Director of Economic Development

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ATTACHMENT #3

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RESOLUTION NO. 2007-37

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
HUNTINGTON BEACH, CALIFORNIA, APPROVING AND
MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND
SAFETY CODE SECTION 33433 FOR A SECOND
IMPLEMENTATION AGREEMENT TO OWNER
PARTICIPATION AGREEMENT BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON
BEACH AND BELLA TERRA ASSOCIATES

WHEREAS, the Redevelopment Agency of the City of Huntington Beach ("Agency") is engaged in activities necessary to execute and implement the redevelopment plan ("Redevelopment Plan") for the Merged Redevelopment Project Areas of Huntington Beach (collectively the "Merged Project Area"); and

WHEREAS, Agency proposes to enter into a Second Implementation Agreement ("Second Implementation Agreement") with Participant, which supplements, modifies or incorporates by reference the terms of that certain Owner Participation Agreement by and between Agency and Huntington Center Associates, LLC, (the "Original Participant") dated as of October 2, 2000 (the "OPA"), as previously supplemented by that certain First Implementation Agreement dated as of August 4, 2005 (the OPA, the First Implementation Agreement and the Second Implementation Agreement shall be collectively referred to herein as the "Agreement"); and

WHEREAS, That certain real property within the boundaries of the Merged Project Area set forth with particularity in the Agreement (the "Property") was recently conveyed by the Original Participant to Bella Terra Associates, LLC (the "Participant") pursuant to an Assignment and Assumption Agreement approved by the Agency; and

WHEREAS, pursuant to the California Community Redevelopment Law (California Health and Safety Code, Section 33000 et seq.) the Agency and the City Council held a joint public hearing on the Second Implementation Agreement, having duly published notice of such public hearing and having made copies of the proposed Second Implementation Agreement and other reports and documents (including the summary referred to in Section 33433) available for public inspection and copying; and

WHEREAS, the City Council has duly considered all terms and conditions of the proposed transaction, and believes that it is in the best interests of the Merged Project Area and the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable State and local law and requirements;

NOW, THEREFORE, IT IS RESOLVED by the City Council of the City of Huntington Beach, California, as follows:

1. All recitals set forth in this resolution are true and correct.
2. The consideration from Participant under the Agreement is not less than the fair reuse value at the use and with the covenants and conditions and development costs authorized by the Second Implementation Agreement for, among other reasons, the reasons set forth in the 33433 Summary.
3. The implementation of the Agreement, as amended by the Second Implementation Agreement, will assist in the elimination of blight in the Merged Project Area.
4. The implementation of the Agreement, as amended by the Second Implementation Agreement, is consistent with the implementation plan adopted by the Agency pursuant to Section 33490 of the Health and Safety Code.
5. The proposed Second Implementation Agreement is hereby approved in substantially the form presented at this meeting, with such minor changes as may be approved by the Executive Director of the Agency with the approval as to form by the Agency General Counsel.
6. The City Council hereby authorizes the City Clerk to deliver a copy of this Resolution to the Executive Director and members of the Agency. A copy of the Second Implementation Agreement when executed by the Agency shall be placed on file in the office of the City Clerk.

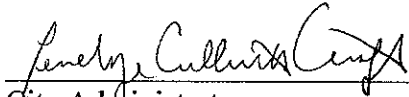
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PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting held thereof on the _____ day of _____, 200_.

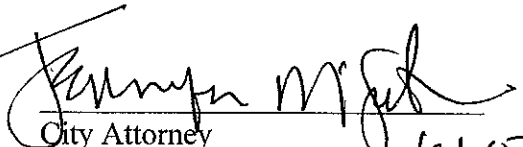
Mayor

REVIEWED AND APPROVED

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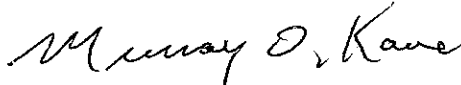


City Administrator



City Attorney 6.1.07

KANE, BALLMER & BERKMAN
Special Counsel



Murray O. Kane

INITIATED AND APPROVED:



Director of Economic Development

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ATTACHMENT #4

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**SUMMARY REPORT PURSUANT TO
SECTION 33433
OF THE
CALIFORNIA HEALTH AND SAFETY CODE
ON THE
SECOND IMPLEMENTATION AGREEMENT
TO THE
OWNER PARTICIPATION AGREEMENT
BY AND BETWEEN THE
REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH
AND
BELLA TERRA ASSOCIATES**

BACKGROUND STATEMENT

In 2000, the Redevelopment Agency of the City of Huntington Beach (Agency) executed an Owner Participation Agreement (OPA) with Huntington Center Associates, LLC (Original Participant); this OPA was subsequently amended to extend the Schedule of Performance. The OPA and the First Implementation Agreement to the OPA required the Original Participant to redevelop the Huntington Center property with a mixed-use commercial project including a multiplex theater, retail anchor tenants, retail shops and restaurants (Project). The Site is located in the Merged Redevelopment Project Area (Project Area), and the purpose of the OPA is to effectuate the Merged Redevelopment Project Area Redevelopment Plan (Redevelopment Plan).

Prior to executing the OPA, the Agency prepared a report summarizing the financial terms of the transactions in accordance with the reporting requirements imposed by California Health and Safety Code Section 33433 (Section 33433). The 2000 Summary Report is attached for reference purposes.

The property was recently conveyed to Bella Terra Associates (Current Participant); this entity is responsible for completing the scope of development required by the Original OPA and the First Implementation Agreement to the OPA. The Agency and the Current Participant have clarified certain financial terms of the executed OPA, and are proposing to modify the Agency loan repayment structure. The proposed clarifications and modifications are detailed in a Second Implementation Agreement to the OPA (Second Implementation Agreement). The Second Implementation Agreement materially alters the OPA terms, and thus, the Agency is required by Section 33433 to prepare a new summary report for the transaction.

SECTION 33433 REPORT MODIFICATIONS

The Section 33433 report prepared in support of the OPA includes the following sections:

- I. **Summary of the Proposed Agreement:** This section summarizes the major responsibilities imposed on the Original Participant and the Agency by the OPA.
- II. **Cost of the Agreement to the Agency:** This section projects the net cost to the Agency associated with implementing the OPA.
- III. **Benefits to the City:** This section summarizes the sales tax revenue projected to be received by the City of Huntington Beach (City) under the OPA.
- IV. **Estimated Value of the Interests to be Conveyed:** This section estimates the value of the interests to be conveyed to the Original Participant.
- V. **Consideration to be Received and Comparison with the Established Value:** This section describes the compensation to be received by the Agency, and explains any difference between the compensation and the established value of the Site.
- VI. **Blight Elimination:** This section describes the existing blighting conditions on the Site, and explains how the transaction will assist in alleviating the blighting influence.
- VII. **Conformance with the AB1290 Implementation Plan:** This section describes how the transaction will achieve goals identified in the Agency's adopted AB1290 Implementation Plan.

As discussed previously, a summary report was prepared in support of the OPA. As such, the following summary report focuses solely on the sections of the report that are impacted by the Second Implementation Agreement. The report sections that do not require modification are:

1. The estimated value of the interests to be conveyed;
2. Blight elimination; and
3. Conformance with the AB 1290 Implementation Plan.

The sections that are re-evaluated in this summary report are:

1. Summary of the proposed Second Implementation Agreement;
2. The net cost of the Second Implementation Agreement to the Agency;
3. The benefits received by the City under the Second Implementation Agreement; and
4. The consideration to be received, and comparison with the established value.

SUMMARY OF THE AGREEMENT

Executed OPA Terms

The OPA requires the Agency to provide \$15 million in assistance to the Project. The assistance was directly tied to demolition; clearance; site preparation; public improvements; utilities and facilities; acquisition of land and easements; and all other legally permissible items reimbursable to the Original Participant. The assistance was to be treated as a loan from the Original Participant to the Agency. The OPA imposes the following repayment terms on the loan:

1. The loan bears interest at 6.9357%. In accordance with the OPA, this rate is equal to 8% minus $\frac{1}{2}$ the difference between 8% and the True Interest Cost as defined in the OPA.
2. Interest begins accruing on the loan upon the "Operating Commencement Date".
3. The Agency's debt service payment obligation commences on September 30th of the year following both the "Completion Date" and the Operating Commencement Date.
4. The debt service payments on the loan are drawn solely from 60% of the net property tax increment revenue generated by the Project plus an amount equal to 60% of the sales tax revenue generated by the Project above \$750,000 per year.
5. The loan is to be amortized over a 20-year period. Any outstanding principal and interest balance at the end of the amortization period must be forgiven.

The OPA defines the Operating Commencement Date as the latter of the date that the City of Huntington Beach (City) issues a Certificate of Occupancy, or the opening of the Project for business to the general public. Due to standard City practices, the City will never issue a Certificate of Occupancy for the entire Project as contemplated by the OPA. The partially completed Project opened for business on November 1, 2005.

The Agency and the Current Participant disagree when the Operating Commencement Date, as defined by the OPA, occurred. As a compromise settlement to this disagreement, the Second Implementation Agreement calls for interest to begin accruing on the Agency's payment obligation on November 1, 2005.

For all other purposes under the OPA, including the commencement of the Agency's payment obligations and the Agency Participation Payments, the Completion Date will be applied. The Completion Date is defined in the OPA as the date on which the Release of Construction Covenants is issued and recorded in the Official Records of Orange County.

Comparison of the Second Implementation Agreement to the OPA

To resolve the disagreement, the proposed Second Implementation Agreement modifies the loan terms detailed in the OPA. The terms being proposed in the Second Implementation Agreement are:

1. November 1, 2005 is established as the date on which interest began accruing on the loan.
2. The loan bears interest at 6.9357%. This is the same interest rate as would be applied under the OPA.
3. The Agency will make a \$629,447 prepayment to the Current Participant on the September 30th that follows the Completion Date.
4. Debt Service Payments
 - a. The first scheduled debt service payment on the loan is due on the September 30th that follows the Completion Date. This is the same debt service commencement date as was imposed by the OPA.
 - b. No sales tax revenues are pledged to the repayment of the loan. Comparatively, the OPA required the Agency to allocate 60% of the sales tax revenue received by the City from the Project, above \$750,000, to the debt service payments.
 - c. The debt service payments on the loan will be drawn exclusively from the net property tax increment generated by the Project. However, the definition of "net property tax increment" has been changed in the Second Implementation Agreement:
 - i. The OPA defined net property tax increment as the property tax increment received by the Agency after deduction of Housing Set-Aside funds, County Administrative costs and ERAF payments.
 - ii. The Second Implementation Agreement definition does not permit the Agency to deduct any amount for ERAF obligations that may be imposed in the future in determining the amount of net tax increment that is available to pay the debt service.
 - d. One-hundred percent (100%) of the net property tax increment revenue will be committed to the debt service annually until the principal and interest balances are fully repaid, or the end of 20 years, whichever occurs first.

5. Any outstanding principal and interest balance remaining at the end of 20 years must be forgiven by the Current Participant. The forgiveness date remains unchanged from the terms imposed by the OPA.

The benefits associated with the proposed modifications are:

1. Setting November 1, 2005 as the date on which interest began accruing on the loan resolves the disagreement between the Participant and the Agency.
2. The OPA provided for the debt service on the loan to be calculated based on the net property tax increment and net new sales tax generated by the Project. The proposed modification eliminates the sales tax contribution, which means that the General Fund revenues will be greater under the proposed Second Implementation Agreement than they would be under the OPA terms.
3. The upfront prepayment of \$629,447 creates benefits for both the Agency and the Participant. These benefits are:
 - a. The Agency's current investment returns are significantly less than the 6.9357% interest rate applied to the loan. The proposed prepayment reduces the principal balance, which in turn reduces the interest payments to be made by the Agency over the loan repayment term. This creates a net financial benefit for the Agency.
 - b. The debt service structure proposed in the Second Implementation Agreement produces lower debt service payments during the first 10 years than would have been generated under the OPA. The provision of the proposed prepayment mitigates the impact created by the reduction in the annual payments.

COST OF THE AGREEMENT TO THE AGENCY

Under the terms imposed by both the OPA and the proposed Second Implementation Agreement, the Agency will receive more property tax increment revenues than will be required to fund the \$15 million in assistance plus interest. During the loan repayment term, the Agency revenues will be limited to the housing set-aside portion of the property tax increment. After the loan term expires, the Agency will receive 100% of the property tax increment net of pass-throughs to other governmental entities.

The Agency will receive property tax increment through the end of fiscal year 2033/34. The net Agency revenue projected to be received under the OPA is compared with the projected net Agency revenue under the proposed Second Implementation Agreement in the following table:

Net Revenue	OPA	Second Implementation Agreement	Difference
Nominal Dollars	\$23,919,000	\$29,662,000	\$5,743,000
Net Present Value	\$8,419,000	\$7,513,000	(\$906,000)

As can be seen in the preceding table, in nominal dollars, the net Agency revenue is projected to be higher under the Second Implementation Agreement than under the OPA. However, the revenues are lower when considered on a present value basis. The reasons for this are:

1. The Project value was projected at \$111 million when the OPA was executed. The assessed value of the Project is currently set at \$203 million. Thus, the Project will generate substantially more property tax increment over time than was originally projected.
2. The increases in gross property tax increment are offset by the fact that the Second Implementation Agreement calls for interest to begin accruing on the Agency obligation on November 1, 2005. Comparatively, the earliest possible debt service commencement date is September 30, 2007. This lag time was not anticipated when the OPA was executed.

Benefits to the City

Sales taxes represent the primary revenue source that the City will receive from the Project. The net sales tax revenues projected to be received by the City over the original 20-year loan term are compared in the following table:

Net Revenue	OPA	Second Implementation Agreement	Difference
Nominal	\$26,838,000	\$45,328,000	\$18,490,000
Net Present Value	\$13,191,000	\$21,119,000	\$7,928,000

The Second Implementation Agreement allows the City to receive 100% of the sales tax revenues generated by the Project from the commencement of operations forward. Under the OPA, the City was to receive the first \$750,000 in sales tax revenues, and then was required to commit 60% of the remaining sales taxes to debt service over the 20-year loan term. The proposed modifications to the loan terms results in the City being projected to receive \$18.49 million more in sales tax revenues than were projected to be received under the OPA. This translates to \$7.93 million in present value terms.

CONSIDERATION TO BE RECEIVED, AND COMPARISON WITH THE ESTABLISHED VALUE

The OPA did not require the Original Participant to acquire any land from the Agency. However, the OPA stated that if the Agency ultimately acquired any portion of the Site, the Original Participant would be required to purchase the property from the Agency at the property's value at the highest use permitted under the Redevelopment Plan. Ultimately the Original Participant was not required to purchase any property from the Agency, and therefore this provision is no longer pertinent to the transaction.

The OPA requires the Agency to provide assistance to the Project for infrastructure improvements; the assistance amount is set at a principal amount of \$15 million. The OPA further requires the Original Participant to pay for the improvements, and then to treat the expenditure as a loan to be repaid by the Agency over time.

The 2000 Summary Report determined that the Project demonstrated the need for \$18.1 million in upfront assistance. It was therefore concluded that the assistance package did not reduce the Original Participant's land purchase price to less than the Site's fair reuse value.

The Second Implementation Agreement does not alter the principal balance or the interest rate applied to the assistance being provided to the Current Participant. However, it does clarify and modify the loan terms included in the OPA. The results of these changes are:

1. The net revenues to be received by the Agency are projected to increase by \$5.74 million in nominal dollars, but they are projected to decrease by \$906,000 in present value terms.
2. The revenue to be received by the City is projected to increase by a total of \$18.49 million, and a net present value of \$7.93 million.
3. The total Agency and City revenues are projected to increase above the amounts projected to be received under the OPA. The net revenue to be received by the Agency and the City is projected to increase by a total of \$24.23 million in nominal terms, and by a net present value of \$7.02 million.

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